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ABSTRACT

This guide provides information on Title I of the Americans with Disabilities Act (ADA) in a question-and-answer format for employees. The guide covers such topics as the following: which employers must comply; what employment practices and activities are covered; who is protected against employment discrimination; definitions of a person with a disability, a job's "essential functions," a "reasonable accommodation," and "undue hardship"; modification of existing facilities; preemployment medical examinations; drug testing; limits on health insurance coverage; alcoholism; age discrimination; remedies; and procedures to follow if individuals believe they have been victims of discrimination. Appendixes include a list of nine ADA Title I resources and five recommended readings. (YLB)

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Americans with Disabilities Act (ADA)

Title 1—Employment

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AARP

Questions & Answers for Employees

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About AARP

AARP is the nation's leading organization for people age 50 and over. It serves their needs and interests through legislative advocacy, research, informative programs, and community services provided by a network of local chapters and experienced volunteers throughout the country. The organization also offers members a wide range of special membership benefits, including Modern Maturity magazine and the monthly Bulletin.

About the Work Force Programs Department

AARP educates employers, employees, and the general public about retirement and employment issues affecting older workers through the Association's Work Force Programs Department. The Department assists midlife and older workers in making informed decisions about employment and retirement; encourages employers to hire and retain midlife and older workers and to develop personnel policies and practices that are age-neutral; seeks to eliminate age discrimination in employment through educational, legislative, and judicial efforts; and informs older persons of their rights under federal and state age discrimination, disability, and pension laws.

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AMERICANS WITH DISABILITES ACT (ADA)

Title I. Employment

Questions and Answers for Employees

Q What does Title I of the Americans with Disabilities Act (ADA) do?

A Title I of the ADA prohibits employers from discriminating against a qualified job applicant or employee with a disability.

Q Which employers must comply with the ADA, and when does the law take effect?

A All employers with 15 or more employees must comply, including private employers, state and local governments, employment agencies, and labor unions. For employers with 25 or more employees, the law took effect on July 26, 1992. For employers with 15-24 employees, the law took effect on July 26, 1994.

State and local governments are covered by the ADA as are most employees of Congress and other federal legislative employees. Most federal government workers are not covered by the ADA; however, they are protected by the Rehabilitation Act of 1973.

Q What employment practices and activities are covered by Title I of the ADA?

A The ADA prohibits discrimination in all employment practices, including job advertising, recruitment, application procedures, testing, hiring, assignments, promotions, discipline, compensation, benefits, leave, training, layoff/recall, termination, and other terms, conditions, and privileges of employment.

Q Who is protected against employment discrimination?

A Employment discrimination is prohibited against "qualified individuals with disabilities."

Q Who is a person with a disability?

A A person with a disability is one who:

1. Has a physical or mental impairment that substantially limits that person in one or more major life activities, for example, caring for oneself, performing manual tasks, walking, seeing, thinking, hearing, speaking, breathing, learning, working, sitting, lifting, reaching, and standing, or
2. Has a record of such impairment, for example, a person who has recovered from cancer or mental illness, or
3. Is regarded as having an impairment, for example, a person who is severely scarred or disfigured but is not actually disabled.

Q Can a person be discriminated against based upon his/her relationship or association with a person with a disability?

A The ADA prohibits discrimination based on an individual's relationship to or association with a person with a disability. For example, a person with a disabled spouse or child could not be denied employment because of an employer's assumption that the applicant would use excessive leave to care for the spouse or child or that the employer's health insurance costs would increase. The ADA also prohibits discrimination based on "association," for example, an employee who volunteers to help people with AIDS would be protected from a discriminatory employment action that is motivated by such activity.

Q Who is a "qualified" person with a disability?

A A "qualified" person with a disability is a person who meets the skill, experience, education, and other job-related requirements for the job and who, with or without a "reasonable accommodation," can perform the "essential functions" of the job.

Q What are a job's "essential functions"?

A A job's "essential functions" are those elements that are basic, necessary, or vital to its satisfactory performance. Many jobs have some extra functions that may not be essential to satisfactory job performance. For example, essential functions of a receptionist's job may be to greet visitors and to answer the phone; distributing the mail may be a function that is not essential to the job. The employer's job description is a useful guide for determining which functions are essential and which are not.

Q What is a "reasonable accommodation"?

A A "reasonable accommodation" is any modification or adjustment that allows qualified applicants or employees with disabilities to participate in the application process or to perform the job's essential functions. There is no set list of reasonable accommodations because it varies with each situation. What constitutes a reasonable accommodation depends on the particular job's essential functions and the nature of the disability. Examples of reasonable accommodations are:

- job restructuring
- part-time or modified work schedules
- purchasing or modifying equipment or devices
- adjusting or modifying examinations
- writing new training materials or policies
- providing qualified readers or interpreters
- ensuring that facilities used by persons with disabilities are accessible and usable

Q Whose responsibility is it to mention the need for a reasonable accommodation?

A The applicant or employee must do so. An employer may not generally inquire whether the applicant needs reasonable accommodation. For example, an employer may not make inquiries such as, "Would you need reasonable accommodation in this job?" An employer may, however, ask an applicant to describe or demonstrate how, with or without reasonable accommodation, she or he would perform job related functions if the employer also asks all applicants in the same category. Also, if an applicant's disability is known to the employer and is one which would apparently affect job function, an employer may ask an applicant or employee to demonstrate or explain how, with or without reasonable accommodation, he or she would perform the job's essential functions.

Q How should an employer go about making a reasonable accommodation for an applicant or employee?

A The employer should:

1. Analyze the job's purposes and its essential functions.
2. In consultation with the person with a disability, identify potential accommodations and assess the effectiveness of each.
3. While taking into consideration the preferences of the person with a disability, select the accom modation that best serves the needs of the individual and the employer.

Q Are there limits to an employer's obligation to make a "reasonable accommodation"?

A Yes. The person with a disability must be otherwise qualified for the job and the reasonable accommodation must not impose an "undue hardship" on the employer.

Q What is an "undue hardship"?

A An "undue hardship" requires significant difficulty or expense in relation to the size and nature of the business and the type and cost of the accommodation. What may be an undue hardship for one employer may not be an undue hardship for another. Usually the larger the employer the less likely it is that the need to make a reasonable accommodation would be considered an "undue hardship." Whether an accommodation is an "undue hardship" will be determined on a case-by-case basis.

Q Must an employer modify existing facilities to make them accessible?

A Not every facility or office in the company must be accessible, but those to be used by persons with disabilities should be accessible, unless making the facilities accessible would cause an undue hardship for the employer.

Q May an employer ask if a prospective employee is disabled?

A An employer may <u>not</u> make a pre-employment inquiry on an application form or in an interview as to whether, or to what extent, an individual is disabled. The employer <u>may</u> ask a job applicant whether he or she can perform the essential functions of the job. If the applicant/employee has a disability that is known to the employer, the employer may ask specifically how he or she can perform the job functions and whether an accommodation would be needed. The focus of the interview should be on the applicant's abilities and the essential functions of the job, <u>not</u> on the person's disabilities.

Q Can employers require pre-employment medical examinations of persons with disabilities?

A Not usually. An employer cannot require a pre-offer medical examination, but post-job-offer medical examinations are allowed under specific circumstances. A job offer may be conditioned on the results of a job performance-related medical examination <u>only</u> if it is required of <u>every</u> new employee in the same job category. The test should be related to the essential functions of the job and have a clear business necessity. Medical information obtained from medical examinations cannot be retained in regular personnel files and must comply with all ADA confidentiality requirements.

Q Is testing for illegal drugs permissible under the ADA?

A Yes. A test for illegal drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results.

Q Can an employer limit an employee's health insurance coverage because the employee has a disability?

A Employees with disabilities must be granted equal access to whatever health insurance coverage the employer provides to employees without disabilities. However, employers may continue to offer policies that limit or exclude payment for pre-existing conditions, even if such policies adversely affect people with disabilities.

An employer may not reduce the level of health insurance benefits to an employee simply because an employee has a dependent with a disability — even if providing such benefits would result in increased health insurance costs for the employer.

Q Are current users of illegal drugs, whether applicants or employees, protected by the ADA?

A No. However, current and former participants in supervised rehabilitation programs (and who are no longer engaging in illegal drug use) are protected.

Q Is AIDS covered by the ADA?

A Yes.

Q Is alcoholism covered by the ADA?

A An alcoholic does qualify as an "individual with a disability" under the ADA. However, employers may prohibit the use of alcohol at the workplace by all employees and require that employees not be under the influence of alcohol at the workplace. Employers may also require alcoholics to maintain the same standards of job performance and behavior required of all other employees — even if unsatisfactory performance or behavior is related to the employee's alcoholism.

Q Are temporary nonchronic impairments covered by the ADA?

A Usually no. For example, colds, influenza, broken limbs, sprains, concussions, or appendicitis generally would not be considered disabilities. However, a person whose broken leg did not heal properly and produced a permanent substantial limitation in his or her ability to walk would be considered to have a disability.

Q Is pregnancy covered by the ADA?

A Not usually. A normal pregnancy is not a disability per se. Infertility problems, however, may be covered under the ADA.

Q Is old age, per se, a disability under the ADA?

A No. However, various medical conditions commonly associated with age, such as arthritis, hearing loss, or glaucoma, could be considered disabilities under the ADA.

Q Why is it important for older applicants and employees to be aware of their ADA rights?

A Due to societal prejudices concerning older persons generally, older applicants and employees may be reluctant to seek a reasonable accommodation for a disability — whether or not the disability is age-related. It is hoped that by asserting their ADA rights more older people will be able to become employed and stay employed. In addition, depending on the circumstances, an older worker may also benefit from the rights provided by other federal employment discrimination statutes such as the Age Discrimination in Employment Act and Title VII of the Civil Rights Act of 1964.

Q What remedies are available to persons who successfully litigate their ADA claims?

A Traditional discrimination remedies, including injunctive relief, hiring, promotion, reinstatement, back pay, front pay, and restored benefits. Also, in cases where intentional discrimination is found or when an employer has not made a "good faith" effort to provide a reasonable accommodation, compensatory and punitive damages may be awarded. An employer can also be ordered to provide an accommodation to the individual.

Q What should a qualified individual do if it is believed he or she was discriminated against by an employer because of a disability?

A If the applicant or employee cannot resolve the issue with the employer and wants to pursue the matter further, he or she should contact the nearest office of the Equal Employment Opportunity Commission (EEOC) and file a charge of discrimination. Generally, a charge must be filed within 180 days of the alleged discrimination. In states that have local laws that provide relief for discrimination on the basis of disability, a person may have up to 300 days to file a charge of discrimination. However, to protect your rights, it is best to contact the EEOC promptly if discrimination is suspected. For additional information about Title I of the ADA, contact:

1. Equal Employment Opportunity Commission
   1801 L Street, N.W.
   Washington, DC 20005
   1-800-669-EEOC (3362)
   (for ADA publications)
   1-800-669-4000
   (for technical assistance and filing a charge)

2. Disability Rights Education & Defense Fund, Inc. (DREDF)
   2212 Sixth Street
   Berkeley, CA 94710
   1-800-466-4232

3. The President's Committee on Employment of People with Disabilities
   1331 F Street, N.W.
   Washington, DC 20004-1107
   (202) 376-6200 (Voice) or
   (202) 376-6205 (TDD)

4. National Alliance for the Mentally Ill (NAMI)
   1-800-950-NAMI (6264)

For specific information on making reasonable accommodations in the workplace, contact:

Job Accommodation Network (JAN)
West Virginia University, 809 Allen Hall
P. O. Box 468
Morgantown, WV 26506
1-800-232-9675

ADA TITLE I RESOURCES

1. **Equal Employment Opportunity Commission (EEOC).** Headquarters, Washington, D.C. For information on filing a charge and for technical assistance, call 1-800-669-4000 (Voice). For free ADA publications including the ADA Technical Assistance Manual (which contains practical information about the ADA's employment provisions) and Resource Directory (a comprehensive resource directory of disability organizations, state and federal agencies and federally funded ADA projects), call toll free 1-800-669-3362 (Voice) or 1-800-800-3302 (TDD).

2. **Disability and Business Technical Assistance Centers.** There are ten regional centers which provide ADA information free of charge. Call the toll free number and you will be connected with the ADA Center in your region. 1-800-949-4232 (Voice/TDD).

3. **Disability Rights, Education and Defense Fund.** Berkeley, CA. Provides technical assistance through its "800" ADA Hotline and provides training and publications; conducts litigation. (510) 644-2555 (Voice), (510) 644-2625 (TDD), ADA Hotline (toll free): 1-800-466-4232 (Voice/TDD).

4. **Job Accommodation Network (JAN).** JAN is a free service of the President's Committee o.· Employment of People with Disabilities. JAN provides information regarding possible accommodations for individuals in the workplace and information regarding the ADA. Call either of these toll free numbers: 1-800-526-7234 (Voice/TDD) or 1-800-ADA-WORK (Voice/TDD) or to use their electronic bulletin board to ask questions or post public notices (and you have access to a computer and modem), 1-800-DIAL-JAN.

5. **National Association of Protection and Advocacy Systems (NAPAS).** Washington, D.C. A national voluntary membership organization of the federally mandated Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP) in each state. P&A Systems and CAPs provide legal assistance and advocacy to persons with disabilities. To locate the P&A or CAP nearest you, contact NAPAS.
(202) 408-9514 (Voice) or
(202) 408-9521 (TDD).

6. **American Bar Association Commission on Mental and Physical Disability Law.** Washington, D.C. Provides information and technical assistance. (202) 331-2240 (Voice).

7. **Judge David L. Bazelon Center for Mental Health Law.** Washington, D.C. Identifies job and worksite accommodations and provides technical assistance. (202) 467-5730 (Voice) or (202) 467-4232 (TDD).

8. **National Alliance for the Mentally Ill (NAMI).** NAMI is a grass roots family self-help support and advocacy organization dedicated to improving the lives of people with severe mental illness. NAMI aids people through its self-help groups, public education and advocacy. NAMI's toll free number is: 1-800-950-NAMI (6264).

9. **National Mental Health Association.** Alexandria, VA. Provides consultation and technical assistance and related materials on job restructuring, flex time, quiet work spaces, and other accommodations. (703) 683-7722 (Voice).

RECOMMENDED READING

American Bar Association and the National Mental Health Association,
The ADA and Mental Illness: A Resource Manual for Employers, to order call (202) 331-2240 (Voice), Washington, D.C. Cost is $35 (including shipping).

Disability Compliance Bulletin, (bi-weekly periodical), LRP Publications,
747 Dresher Road, P.O. Box 980, Horsham, PA 19044-0980; cost is $145 per year.

EEOC, The Technical Assistance Manual (Title I). The first copy is free; subsequent copies cost $25. To order, call toll free 1-800-669-3362 (Voice) or 1-800-800-3302 (TDD).

Ogletree, Deakins, Nash, Smoak & Stewart,
Americans with Disabilities Act: Employee Rights & Employer Obligations, Matthew Bender, New York, NY, 1993. To order, call 1-800-223-1940. Cost is $100 plus shipping and tax.

Phelan, Gary and Janet Bond Arterton,
Disability Discrimination in the Workplace, Clark Boardman Callaghan, New York, NY, 1992. To order, call 1-800-323-1336. Cost is $140 plus shipping and tax.

Morse, J. Kenneth L. and Sharon Rennert,
"Older Americans and the Americans with Disabilities Act of 1990: Title I," Best Practice Notes on Delivery of Legal Assistance to Older Persons, Vol. 6, Nos. 1 and 2, The Center for Social Gerontology, Inc., 2307 Shelby Avenue, Ann Arbor, MI, 1994. To order, contact CSG, ATTN: Saidy Barinaga-Burch, (313) 665-1126, (313) 665-2071 - FAX. Cost is $4.

AARP WORK FORCE PROGRAMS DEPARTMENT

American Association of Retired Persons
601 E Street, N.W.
Washington, DC 20049

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